



August 4, 1999

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR99-2197

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127029.

The Dallas/Fort Worth International Airport (the "airport") received a written request from one of its employees for the "Sexual Harassment Complaint filed against me" by another airport employee. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.

To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance you have not made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The requested complaint may not be withheld under this exception.

You contend that the complainant's name comes within the protection of the informer's privilege, as incorporated into section 552.101 of the Government Code. The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of laws to officers responsible for enforcing those laws. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records

Decision Nos. 515 (1988), 191 (1978). Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). In this instance, the requestor has knowledge of the identity of the complainant. The privilege does not apply here.

You also contend that the requested information is excepted from public disclosure pursuant to common-law privacy. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. *See also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and is of no legitimate concern to the public). The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation.

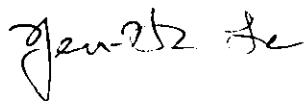
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation v. Ellen*, 840 S.W.2d at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.*

In this instance, however, you state that the investigation of the complaint is on-going; consequently, the airport possesses no "summary" of the investigation. Pursuant to *Ellen*, you must withhold the victim's identity. However, we believe there is a legitimate public interest in details of the complaint. The airport must release all remaining information contained in the complaint. *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination

regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" clearly distinguishable.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 127029

Encl. Submitted documents

cc: Mr. Robert D. Hendricks
Chief Information Officer
Dallas/Fort Worth International Airport
P.O. Box 619428
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(w/o enclosures)